

Part 5. Tax Credits for Qualified Business Investments.

§ 105-163.010: Repealed pursuant to former G.S. 105-163.015(d), effective for investments made on or after January 1, 2014.

§ 105-163.011: Repealed pursuant to former G.S. 105-163.015(d), effective for investments made on or after January 1, 2014.

§ 105-163.012: Repealed pursuant to former G.S. 105-163.015(d), effective for investments made on or after January 1, 2014.

§ 105-163.013: Repealed pursuant to former G.S. 105-163.015(d), effective for investments made on or after January 1, 2014.

§ 105-163.014: Repealed pursuant to former G.S. 105-163.015(d), effective for investments made on or after January 1, 2014.

§ 105-163.015: Repealed pursuant to former G.S. 105-163.015(d), effective for investments made on or after January 1, 2014.

Article 4A.

Withholding; Estimated Income Tax for Individuals.

§ 105-163.1. Definitions.

The following definitions apply in this Article:

- (1) Compensation. – Consideration a payer pays to any of the following:
  - a. A nonresident individual or nonresident entity for personal services performed in this State.
  - b. An ITIN holder who is a contractor and not an employee for services performed in this State.
- (2) Repealed by Session Laws 2009-476, s. 1, effective for taxable years beginning on or after January 1, 2010.
- (3) Repealed by Session Laws 2014-3, s. 14.4(a), effective for taxable years beginning on or after January 1, 2014.
- (4) Employee. – An individual, whether a resident or a nonresident of this State, who performs services in this State for wages or an individual who is a resident of this State and performs services outside this State for wages. The term includes an ordained or licensed member of the clergy who elects to be considered an employee under G.S. 105-163.1A, an officer of a corporation, and an elected public official.
- (5) Employer. – A person for whom an individual performs services for wages. In applying the requirements to withhold income taxes from wages and pay the withheld taxes, the term includes a person who:
  - a. Controls the payment of wages to an individual for services performed for another.
  - b. Pays wages on behalf of a person who is not engaged in trade or business in this State.

- c. Pays wages on behalf of a unit of government that is not located in this State.
  - d. Pays wages for any other reason.
- (6) Individual. – Defined in G.S. 105-153.3.
- (6a) ITIN contractor. – An ITIN holder who performs services in this State for compensation other than wages.
- (6b) ITIN holder. – A person whose taxpayer identification number is an Individual Taxpayer Identification Number (ITIN).
- (7) Miscellaneous payroll period. – A payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.
- (7a) Nonresident contractor. – Either of the following:
  - a. A nonresident individual who performs in this State for compensation other than wages any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.
  - b. A nonresident entity that provides for the performance in this State for compensation of any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.
- (8) Nonresident entity. – Any of the following:
  - a. A foreign limited liability company, defined using the same definition for the term "foreign LLC" in G.S. 57D-1-03, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57D of the General Statutes.
  - b. A foreign limited partnership as defined in G.S. 59-102 or a general partnership formed under the laws of any jurisdiction other than this State, unless the partnership maintains a permanent place of business in this State.
  - c. A foreign corporation, as defined in G.S. 55-1-40, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes.
- (9) Pass-through entity. – Defined in G.S. 105-228.90.
- (10) Payer. – A person who, in the course of a trade or business, pays compensation to any of the following:
  - a. A nonresident individual or a nonresident entity compensation for personal services performed in this State.
  - b. An ITIN holder who is a contractor and not an employee for services performed in this State.
- (11) Payroll period. – A period for which an employer ordinarily pays wages to an employee of the employer.
- (11a) Pension payer. – A payor or a plan administrator with respect to a pension payment under section 3405 of the Code.
- (11b) Pension payment. – A periodic payment or a nonperiodic distribution as those terms are defined in section 3405 of the Code.
- (12) Taxable year. – Defined in section 441(b) of the Code.

- (13) Wages. – The term has the same meaning as in section 3401 of the Code.
- (14) Withholding agent. – An employer, a pension payer, or a payer. (1959, c. 1259, s. 1; 1967, c. 716, s. 3; 1973, c. 476, s. 193; 1977, c. 657, s. 5; 1979, c. 801, s. 70; 1983, c. 713, ss. 79, 82; 1985, c. 394, s. 1; c. 656, s. 7; 1985 (Reg. Sess., 1986), c. 853, s. 1; 1987, c. 778, s. 1; 1987 (Reg. Sess., 1988), c. 1015, s. 5; 1989, c. 36, s. 5; c. 728, s. 1.40; 1989 (Reg. Sess., 1990), c. 945, s. 5; c. 981, s. 6; 1991, c. 689, s. 255; 1991 (Reg. Sess., 1992), c. 922, s. 7; 1993, c. 12, s. 9; c. 354, s. 15; 1997-6, s. 6; 1997-109, ss. 1, 2, 4; 1998-162, ss. 1, 2; 1999-414, ss. 1, 2; 2000-126, s. 2; 2003-416, s. 4(b); 2009-476, s. 1; 2013-157, s. 29; 2014-3, s. 14.4(a); 2016-5, s. 2.3; 2018-5, s. 38.1(d).)

**§ 105-163.1A. Ordained or licensed clergyman may elect to be considered an employee.**

An ordained or licensed clergyman who performs services for a church of any religious denomination may file an election with the Secretary and the church he serves to be considered an employee of the church instead of self-employed. Until a clergyman files an election, amounts paid by a church to a clergyman are not subject to withholding. A church shall withhold taxes from a clergyman's wages after the clergyman files an election with it under this section. (1985, c. 394, s. 2; 1985 (Reg. Sess., 1986), c. 826, s. 9; 1989 (Reg. Sess., 1990), c. 945, s. 6.)

**§ 105-163.2. Employers must withhold taxes.**

(a) Withholding Required. – An employer shall deduct and withhold from the wages of each employee the State income taxes payable by the employee on the wages. For each payroll period, the employer shall withhold from the employee's wages an amount that would approximate the employee's income tax liability under Article 4 of this Chapter if the employer withheld the same amount from the employee's wages for each similar payroll period in a calendar year. In calculating an employee's anticipated income tax liability, the employer shall allow for the additions that employee is required to make under Article 4 of this Chapter and the deductions, and credits to which the employee is entitled under Article 4 of this Chapter. The amount of State income taxes withheld by an employer is held in trust for the Secretary.

(b) **(Effective for taxable years beginning before January 1, 2016)** Withholding Tables. – The manner of withholding and the amount to be withheld shall be determined in accordance with tables and rules adopted by the Secretary. The withholding allowances provided by these tables and rules shall, as nearly as possible, approximate the additions the employee is required to make under Article 4 of this Chapter and the deductions, and credits to which an employee is entitled under Article 4 of this Chapter. The Secretary shall promulgate tables for computing amounts to be withheld with respect to different rates of wages for different payroll periods applicable to the various combinations of allowances to which an employee may be entitled and taking into account the appropriate standard deduction. The tables may provide for the same amount to be withheld within reasonable salary brackets or ranges so designed as to result in the withholding during a year of approximately the amount of an employee's indicated income tax liability for that year. The withholding of wages pursuant to and in accordance with these tables shall be deemed as a matter of law to constitute compliance with the provisions of subsection (a) of this section, notwithstanding any other provisions of this Article.

(b) **(Effective for taxable years beginning on or after January 1, 2016)** Withholding Tables. – The manner of withholding and the amount to be withheld shall be determined in accordance with tables and rules adopted by the Secretary. The withholding of wages pursuant to

and in accordance with these tables shall be deemed as a matter of law to constitute compliance with the provisions of subsection (a) of this section, notwithstanding any other provisions of this Article. The Secretary shall promulgate tables for computing amounts to be withheld with respect to different rates of wages for different payroll periods applicable to the various combinations of allowances to which an employee may be entitled and taking into account the appropriate standard deduction. The tables may provide for the same amount to be withheld within reasonable salary brackets or ranges so designed as to result in the withholding during a year of approximately the amount of an employee's indicated income tax liability for that year.

The withholding allowances provided by these tables and rules shall, as nearly as possible, approximate the amount of the employee's indicated income tax liability for that year based upon all of the following factors:

- (1) An income tax rate equal to the rate set in G.S. 105-153.7 plus one-tenth of one percent (0.1%).
- (2) The additions the employee is required to make under Article 4 of this Chapter.
- (3) The deductions and credits to which an employee is entitled under Article 4 of this Chapter.

(c) **Withholding if No Payroll Period.** – If wages are paid with respect to a period that is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days, excluding Sundays and holidays, equal to the number of days in the period with respect to which such wages are paid. In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days, excluding Sundays and holidays, which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(d) **Estimated Withholding.** – The Secretary may, by rule, authorize employers to estimate the wages to be paid to an employee during a calendar quarter, calculate the amount to be withheld for each period based on the estimated wages, and, upon payment of wages to the employee, adjust the withholding so that the amount actually withheld is the amount that would be required to be withheld if the employee's payroll period were quarterly.

(e) **(Effective for taxable years beginning before January 1, 2016)** Alternatives to Tables. – If the Secretary determines that use of the withholding tables would be impractical, would impose an unreasonable burden on an employer, or would produce substantially incorrect results, the Secretary may authorize or require an employer to use some other method of determining the amounts to be withheld under this Article. The alternative method authorized by the Secretary must reasonably approximate the predicted income tax liability of the affected employees. In addition, with the agreement of the employer and employee, the Secretary may authorize an employer to use an alternative method that results in withholding of a greater amount than otherwise required under this section.

The Secretary's authorization of an alternative method is discretionary and may be cancelled at any time without advance notice if the Secretary finds that the method is being abused or is not resulting in the withholding of an amount reasonably approximating the predicted income tax liability of the affected employees. The Secretary shall give an employer written notice of any cancellation and the findings upon which the cancellation is based. The cancellation becomes effective upon the employer's receipt of this notice or on the third day after the notice was mailed.

to the employer, whichever occurs first. If the employer requests a hearing on the cancellation within 30 days after the cancellation, the Secretary shall grant a hearing. After a hearing, the Secretary's findings are conclusive.

(e) **(Effective for taxable years beginning on or after January 1, 2016)** Alternatives to Tables. – If the Secretary determines that use of the withholding tables would be impractical, would impose an unreasonable burden on an employer, or would produce substantially incorrect results, the Secretary may authorize or require an employer to use some other method of determining the amounts to be withheld under this Article. The alternative method authorized by the Secretary must reasonably approximate the predicted income tax liability of the affected employees based upon the factors provided in subsection (b) of this section. In addition, with the agreement of the employer and employee, the Secretary may authorize an employer to use an alternative method that results in withholding of a greater amount than otherwise required under this section.

The Secretary's authorization of an alternative method is discretionary and may be cancelled at any time without advance notice if the Secretary finds that the method is being abused or is not resulting in the withholding of an amount reasonably approximating the predicted income tax liability of the affected employees. The Secretary shall give an employer written notice of any cancellation and the findings upon which the cancellation is based. The cancellation becomes effective upon the employer's receipt of this notice or on the third day after the notice was mailed to the employer, whichever occurs first. If the employer requests a hearing on the cancellation within 30 days after the cancellation, the Secretary shall grant a hearing. After a hearing, the Secretary's findings are conclusive. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; 1981, c. 13; 1989, c. 728, s. 1.41; 1989 (Reg. Sess., 1990), c. 945, s. 7; 1997-109, s. 2; 2014-3, s. 14.5(a); 2015-241, s. 32.16A(a).)

#### **§ 105-163.2A. Pension payers must withhold taxes.**

(a) Definitions. – The definitions provided in section 3405 of the Code apply in this section.

(b) **(Effective for taxable years beginning before January 1, 2015)** Withholding Required. – A pension payer required to withhold federal taxes under section 3405 of the Code on a pension payment to a resident of this State must deduct and withhold from the payment the State income taxes payable on the payment. Liability for withholding and paying taxes under this section on a pension payment falls on the person who would be liable under section 3405 of the Code for withholding federal taxes on the payment.

Except as otherwise provided in this section, the provisions of this Article apply to a pension payer's pension payment to a resident of this State as if it were an employer's payment of wages to an employee. If a pension payer has more than one arrangement under which it may make pension payments to a resident of this State, each arrangement must be treated separately under this section.

(b) **(Effective for taxable years beginning on or after January 1, 2015)** Withholding Required. – A pension payer required to withhold federal taxes under section 3405 of the Code on a pension payment to a resident of this State must deduct and withhold from the payment the State income taxes payable on the payment. Liability for withholding and paying taxes under this section on a pension payment falls on the person who would be liable under section 3405 of the Code for withholding federal taxes on the payment.

Except as otherwise provided in this section, the provisions of this Article apply to a pension payer's pension payment to a resident of this State as if it were an employer's payment of wages to

an employee. The pension payer must file a return, pay the withheld taxes, and report the amount withheld in the time and manner required under G.S. 105-163.6 and G.S. 105-163.7 as if the pension payment were wages. If a pension payer has more than one arrangement under which it may make pension payments to a resident of this State, each arrangement must be treated separately under this section.

(c) Amount. – In the case of a periodic payment, the pension payer must withhold the amount that would be required to be withheld under this Article if the payment were a payment of wages by an employer to an employee for the appropriate payroll period.

In the case of a nonperiodic distribution, the pension payer must withhold taxes equal to four percent (4%) of the nonperiodic distribution.

(d) Election of No Withholding. – The recipient may elect not to have taxes withheld under this section to the extent permitted by section 3405 of the Code. The election must be in the form required by the Secretary. In the case of periodic payments, the election remains in effect until revoked by the recipient. In the case of a nonperiodic distribution, the election applies on a distribution-by-distribution basis unless it meets conditions prescribed by the Secretary for it to apply to subsequent nonperiodic distributions by the pension payer.

A pension payer must notify each recipient of the right to elect not to have taxes withheld under this section. The notice must comply with the requirements of section 3405 of the Code and any additional requirements prescribed by the Secretary.

A recipient's election not to have taxes withheld under this section is void if the recipient fails to furnish the recipient's tax identification number to the pension payer, or the Secretary has notified the pension payer that the tax identification number furnished by the recipient is incorrect.

(e) Exemptions. – This section does not apply to the following pension payments:

- (1) A pension payment that is wages under this Article.
- (2) Any portion of a pension payment that meets both of the following conditions:
  - a. It is not a distribution or payment from an individual retirement plan as defined in section 7701 of the Code.
  - b. The pension payer reasonably believes it is not taxable to the recipient under Article 4 of this Chapter.
- (3) A distribution described in section 404(k)(2) of the Code, relating to dividends on corporate securities.
- (4) A pension payment that consists only of securities of the recipient's employer corporation plus cash not in excess of two hundred dollars (\$200.00) in lieu of securities of the employer corporation. (1999-414, s. 3; 2000-126, s. 3; 2014-3, s. 14.6(a); 2015-259, s. 7.1(c).)

#### **§ 105-163.2B. (Effective for taxable years before January 1, 2015) North Carolina State Lottery Commission must withhold taxes.**

The North Carolina State Lottery Commission, established by Chapter 18C of the General Statutes, must deduct and withhold State income taxes from the payment of winnings in an amount of six hundred dollars (\$600.00) or more. The amount of taxes to be withheld is a percentage of the winnings. The percentage is the individual income tax rate in G.S. 105-153.7. The Commission must file a return, pay the withheld taxes, and report the amount withheld in the time and manner required under G.S. 105-163.6 as if the winnings were wages. The taxes the Commission withholds are held in trust for the Secretary. (2005-276, s. 31.1(bb); 2005-344, s. 10.2(a); 2006-259, s. 8(f); 2006-264, s. 91(b); 2013-316, s. 1.3(g).)

**§ 105-163.2B. (Effective for taxable years beginning on or after January 1, 2015) North Carolina State Lottery Commission must withhold taxes.**

The North Carolina State Lottery Commission, established by Chapter 18C of the General Statutes, must deduct and withhold State income taxes from the payment of winnings in an amount of six hundred dollars (\$600.00) or more. The amount of taxes to be withheld is a percentage of the winnings. The percentage is the individual income tax rate in G.S. 105-153.7. The Commission must file a return, pay the withheld taxes, and report the amount withheld in the time and manner required under G.S. 105-163.6 and G.S. 105-163.7 as if the winnings were wages. The taxes the Commission withholds are held in trust for the Secretary. (2005-276, s. 31.1(bb); 2005-344, s. 10.2(a); 2006-259, s. 8(f); 2006-264, s. 91(b); 2013-316, s. 1.3(g); 2015-259, s. 7.1(d).)

**§ 105-163.3. Certain payers must withhold taxes.**

(a) Requirement. – Every payer who pays more than one thousand five hundred dollars (\$1,500) during a calendar year to either a nonresident contractor or an ITIN contractor must deduct and withhold from compensation paid to the contractor the State income taxes payable by the contractor on the compensation as provided in this section. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the contractor. The taxes a payer withholds are held in trust for the Secretary.

(b) Exemptions. – The withholding requirement does not apply to the following:

- (1) Compensation that is subject to the withholding requirement of G.S. 105-163.2.
- (2) Compensation paid to an ordained or licensed member of the clergy.
- (3) Compensation paid to an entity exempt from tax under G.S. 105-130.11.
- (4) **(Effective for taxable years beginning on or after January 1, 2015)** Compensation paid to an alien, as described by 8 U.S.C. § 1101(a)(15)(H)(ii)(a), that is not subject to federal income tax withholding under section 1441 of the Code.

(c) **(Repealed effective for taxable years beginning on or after January 1, 2015)** Returns. – A payer must file a return with the Secretary and pay the withheld taxes to the Secretary in accordance with the requirements in G.S. 105-163.6.

(d) **(Effective for taxable years beginning before January 1, 2015)** Annual Statement and Report. – A payer required to deduct and withhold from a contractor's compensation under this section must give the contractor a written statement that sets out the following information and any other information required by the Secretary:

- (1) The payer's name, address, and taxpayer identification number.
- (2) The contractor's name, address, and taxpayer identification number.
- (3) The total amount of compensation paid during the calendar year.
- (4) The total amount deducted and withheld under this section during the calendar year.

This statement is due by January 31 following the end of the calendar year, unless the personal services for which the payer is paying are completed before the end of the calendar year and the contractor requests the statement when the services are completed. In this circumstance, the statement is due within 45 days after the payer's last payment of compensation to the contractor.

Each payer shall file with the Secretary an annual report that compiles the information contained in each of the payer's statements to contractors and any other information required by

the Secretary in the manner required by the Secretary. This report is due on the date prescribed by the Secretary and is in lieu of the information report required by G.S. 105-154.

(d) **(Effective for taxable years beginning on or after January 1, 2015)** Returns, Annual Statement, and Report. – A payer required to deduct and withhold from a contractor's compensation under this section must file a return, pay the withheld taxes, and report the amount withheld in the time and manner required under G.S. 105-163.6 and G.S. 105-163.7 as if the compensation were wages.

(e) Records. – This subsection applies to a payer who pays compensation for personal services performed in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program. If a payer does not withhold from payments to a nonresident entity because the entity is exempt from tax under G.S. 105-130.11, the payer must obtain from the entity documentation proving its exemption from tax. If a payer does not withhold from payments to a nonresident corporation or a nonresident limited liability company because the entity has obtained a certificate of authority from the Secretary of State, the payer must obtain from the entity its corporate identification number issued by the Secretary of State. If a payer does not withhold from payments to an individual because the individual is a resident, the payer must obtain the individual's address and social security number. If a payer does not withhold from a partnership because the partnership has a permanent place of business in this State, the payer must obtain the partnership's address and taxpayer identification number. The payer must retain this information with its records.

(f) Payer May Repay Amounts Withheld Improperly. – A payer may refund to a person any amount the payer withheld improperly from the person under this section, if the refund is made before the end of the calendar year and before the payer furnishes the person the annual statement required by subsection (d) of this section. An amount is withheld improperly if it is withheld from a payment to a person who is not a nonresident contractor or an ITIN contractor, if it is withheld from a payment that is not compensation, or if it is in excess of the amount required to be withheld under this section. A payer who makes a refund under this section must take the following actions:

- (1) Not report the amount refunded on the annual statement required by subsection (d) of this section.
- (2) Either not pay to the Secretary the amount refunded or, if the amount refunded has already been paid to the Secretary, reduce by the amount refunded the next payments to the Secretary of taxes withheld from the person. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; 1989, c. 728, s. 1.42; 1989 (Reg. Sess., 1990), c. 945, s. 8; 1997-109, s. 2; 1998-98, ss. 11-13; 1998-162, s. 3; 2009-476, s. 2; 2013-414, s. 39(a); 2015-259, s. 7.1(e); 2015-263, s. 2(a).)

#### **§ 105-163.4. Withholding does not create nexus.**

A nonresident withholding agent's act in compliance with this Article does not in itself constitute evidence that the nonresident is doing business in this State. (1959, c. 1259, s. 1; 1989 (Reg. Sess., 1990), c. 945, s. 9; 1997-109, s. 2.)

#### **§ 105-163.5. Employee withholding allowances; certificates.**

(a) An employee receiving wages is entitled to the withholding allowances that would result in the employer withholding approximately the employee's income tax liability under Article 4 of this Chapter.



(b) Every employee shall, at the time of commencing employment, furnish his or her employer with a signed withholding allowance certificate informing the employer of the allowances the employee claims. If the employee fails to file the allowance certificate, the employer must compute the amount to be withheld from the employee's wages as if the employee were a single individual with no allowances.

(c) Withholding allowance certificates shall take effect as of the beginning of the first payroll period that ends on or after the date on which the certificate is furnished, or if payment of wages is made without regard to a payroll period, then the certificate shall take effect as of the beginning of the miscellaneous payroll period for which the first payment of wages is made on or after the date on which the certificate is furnished.

(d) If, on any day during the calendar year, the amount of withholding allowances to which the employee is entitled is less than the amount of withholding allowances claimed by the employee on the withholding allowance certificate then in effect with respect to the employee, the employee shall, within 10 days thereafter, furnish the employer with a new withholding allowance certificate stating the amount of withholding allowances which the employee then claims, which shall in no event exceed the amount to which the employee is entitled on that day. If, on any day during the calendar year, the amount of withholding allowances to which the employee is entitled is greater than the amount of withholding allowances claimed, the employee may furnish the employer with a new withholding allowance certificate stating the amount of withholding allowances that the employee then claims, which shall not exceed the amount to which the employee is entitled on that day.

(e) Withholding allowance certificates must be in the form and contain the information required by the Secretary.

(f) In addition to any criminal penalty provided by law, if an individual furnishes his or her employer an allowance certificate that contains information that has no reasonable basis and that results in a lesser amount of tax being withheld under this Article than would have been withheld if the individual had furnished reasonable information, the individual is subject to a penalty of fifty percent (50%) of the amount not properly withheld. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; 1981 (Reg. Sess., 1982), c. 1277; 1989, c. 728, s. 1.43; 1997-109, s. 2; 2014-3, s. 14.5(b).)

#### **§ 105-163.6. When employer must file returns and pay withheld taxes.**

(a) General. – A return is due quarterly or monthly as specified in this section. A return shall be filed with the Secretary in the manner required by the Secretary, shall report any payments of withheld taxes made during the period covered by the return, and shall contain any other information required by the Secretary.

Withheld taxes are payable quarterly, monthly, or semiweekly, as specified in this section. If the Secretary finds that collection of the amount of taxes this Article requires an employer to withhold is in jeopardy, the Secretary may require the employer to file a return or pay withheld taxes at a time other than that specified in this section.

(b) Quarterly. – An employer who withholds an average of less than two hundred fifty dollars (\$250.00) of State income taxes from wages each month must file a return and pay the withheld taxes on a quarterly basis. A quarterly return covers a calendar quarter and is due by the last day of the month following the end of the quarter.

(c) Monthly. – An employer who withholds an average of at least two hundred fifty dollars (\$250.00) but less than two thousand dollars (\$2,000) from wages each month must file a return

and pay the withheld taxes on a monthly basis. A return for the months of January through November is due by the 15th day of the month following the end of the month covered by the return. A return for the month of December is due the following January 31.

(d) Semiweekly. – An employer who withholds an average of at least two thousand dollars (\$2,000) of State income taxes from wages each month shall file a return by the date set under the Code for filing a return for federal employment taxes attributable to the same wages and shall pay the withheld State taxes by the date set under the Code for depositing or paying federal employment taxes attributable to the same wages. The date set by the Code for depositing or paying federal employment taxes shall be determined without regard to § 6302(g) of the Code.

An extension of time granted to file a return for federal employment taxes attributable to wages is an automatic extension of time for filing a return for State income taxes withheld from the same wages, and an extension of time granted to pay federal employment taxes attributable to wages is an automatic extension of time for paying State income taxes withheld from the same wages. An employer who pays withheld State income taxes under this subsection is not subject to interest on or penalties for a shortfall in the amount due if the employer would not be subject to a failure-to-deposit penalty had the shortfall occurred in a deposit of federal employment taxes attributable to the same wages and the employer pays the shortfall by the date the employer would have to deposit a shortfall in the federal employment taxes.

(e) Category. – The Secretary shall monitor the amount of taxes withheld by an employer or estimate the amount of taxes to be withheld by a new employer and shall direct each employer to pay withheld taxes in accordance with the appropriate schedule. An employer shall file a return and pay withheld taxes in accordance with the Secretary's direction until notified in writing to file and pay under a different schedule. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; c. 1287, s. 7; 1975, 2nd Sess., c. 979, s. 1; 1977, c. 488; 1987, c. 622, s. 9; c. 813, s. 24; 1989 (Reg. Sess., 1990), c. 945, s. 10; 1993, c. 450, s. 6; 1993 (Reg. Sess., 1994), c. 661, s. 1; 1997-109, s. 2; 2001-427, s. 5(a), (b); 2013-414, s. 39(b).)

#### **§ 105-163.6A. Federal determinations.**

If the amount of taxes an employer is required to withhold and pay under the Code is changed or corrected, the provisions of G.S. 105-159 apply to employers, pension payers, and every other payer required to withhold taxes under this Article. Failure of an employer to comply with this section does not, however, affect an individual's right to a credit under G.S. 105-163.10. (1993 (Reg. Sess., 1994), c. 582, s. 4; 2007-491, s. 17; 2018-5, s. 38.3(d).)

#### **§ 105-163.7. Statement to employees; information to Secretary.**

(a) Report to Employee. – Every employer required to deduct and withhold from an employee's wages under G.S. 105-163.2 shall furnish to the employee in respect to the remuneration paid by the employer to such employee during the calendar year, on or before January 31 of the succeeding year, or, if the employment is terminated before the close of the calendar year, within 30 days after the date on which the last payment of remuneration is made, duplicate copies of a written statement showing the following:

- (1) The employer's name, address, and taxpayer identification number.
- (2) The employee's name, address, and social security number.
- (3) The total amount of wages or remuneration made.
- (4) The total amount deducted and withheld under G.S. 105-163.2.

(b) **Informational Return to Secretary.** – Every employer shall annually file an informational return with the Secretary that contains the information given on each of the employer's written statements to an employee. The Secretary may require additional information to be included on the informational return, provided the Secretary has given a minimum of 90 days' notice of the additional information required. The informational return is due on or before January 31 of the succeeding year and must be filed in an electronic format as prescribed by the Secretary. If the employer terminates its business or permanently ceases paying wages during the calendar year, the informational return must be filed within 30 days of the last payment of remuneration. The informational return required by this subsection is in lieu of the report required by G.S. 105-154.

(c) Repealed by Session Laws 2002-72, s. 16, effective August 12, 2002.

(d) **Deduction Disallowance.** – The Secretary may request a person who fails to timely file statements of payment to another person with respect to wages, dividends, rents, or interest paid to that person to file the statements by a certain date. If the payer fails to file the statements by that date, and, in addition to any applicable penalty under G.S. 105-236, the amounts claimed on the payer's income tax return as deductions for salaries and wages or rents or interest shall be disallowed to the extent that the payer failed to comply with the Secretary's request with respect to the statements. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; 1989 (Reg. Sess., 1990), c. 945, s. 11; 1993 (Reg. Sess., 1994), c. 679, s. 8.3; 1997-109, s. 2; 2002-72, s. 16; 2015-259, s. 7.1(a); 2018-5, s. 38.10(n).)

#### **§ 105-163.8. Liability of withholding agents.**

(a) A withholding agent who withholds the proper amount of income taxes under this Article and pays the withheld amount to the Secretary is not liable to any person for the amount paid. A withholding agent who fails to withhold the proper amount of income taxes or pay the amount withheld to the Secretary is liable for the amount of tax not withheld or not paid. A withholding agent who fails to withhold the amount of income taxes required by this Article or who fails to pay withheld taxes by the due date for paying the taxes is subject to the penalties provided in Article 9 of this Chapter.

(b) Repealed by Session Laws 1998-212, s. 29A.14(g). (1959, c. 1259, s. 1; 1973, c. 476, s. 193; 1989 (Reg. Sess., 1990), c. 945, s. 12; 1997-109, s. 2; 1998-212, s. 29A.14(g).)

#### **§ 105-163.9. Refund of overpayment to withholding agent.**

A withholding agent who pays the Secretary more under this Article than the Article requires the agent to pay may obtain a refund of the overpayment by filing a request for a refund with the Secretary. No refund is allowed, however, if the withholding agent withheld the amount of the overpayment from the wages or compensation of the agent's employees or contractors. A withholding agent must file a request for a refund within the time period set in G.S. 105-241.6. Interest accrues on a refund as provided in G.S. 105-241.21. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; 1975, c. 74, s. 1; 1981 (Reg. Sess., 1982), c. 1223, s. 3; 1989 (Reg. Sess., 1990), c. 945, s. 13; 1997-109, s. 2; 2007-491, s. 18; 2008-187, s. 15.)

#### **§ 105-163.10. Withheld amounts credited to taxpayer for calendar year.**

The amount deducted and withheld under this Article during any calendar year from the wages or compensation of an individual shall be allowed as a credit to that individual against the tax imposed by Article 4 of this Chapter for taxable years beginning in that calendar year. The amount

deducted and withheld under this Article during any calendar year from the compensation of a nonresident entity shall be allowed as a credit to that entity against the tax imposed by Article 4 of this Chapter for taxable years beginning in that calendar year. If the nonresident entity is a pass-through entity, the entity shall pass through and allocate to each owner the owner's share of the credit.

If more than one taxable year begins in the calendar year during which the withholding occurred, the amount shall be allowed as a credit against the tax for the last taxable year so beginning. To obtain the credit allowed in this section, the individual or nonresident entity must file with the Secretary one copy of the withholding statement required by G.S. 105-163.3 or G.S. 105-163.7 and any other information the Secretary requires. (1959, c. 1259, s. 1; 1967, c. 1110, s. 4; 1973, c. 476, s. 193; 1989, c. 728, s. 1.44; 1991 (Reg. Sess., 1992), c. 930, s. 9; 1997-109, s. 2.)

**§§ 105-163.11 through 105-163.14: Repealed by Session Laws 1985, c. 443, s. 1.**

**§ 105-163.15. Failure by individual to pay estimated income tax; interest.**

(a) In the case of any underpayment of the estimated tax by an individual, the Secretary shall assess interest in an amount determined by applying the applicable annual rate established under G.S. 105-241.21 to the amount of the underpayment for the period of the underpayment.

(b) For purposes of subsection (a), the amount of the underpayment shall be the excess of the required installment, over the amount, if any, of the installment paid on or before the due date for the installment. The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier: (i) the fifteenth day of the fourth month following the close of the taxable year, or (ii) with respect to any portion of the underpayment, the date on which such portion is paid. A payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(c) For purposes of this section there shall be four required installments for each taxable year with the time for payment of the installments as follows:

- (1) First installment – April 15 of taxable year;
- (2) Second installment – June 15 of taxable year;
- (3) Third installment – September 15 of taxable year; and
- (4) Fourth installment – January 15 of following taxable year.

(d) Except as provided in subsection (e), the amount of any required installment shall be twenty-five percent (25%) of the required annual payment. The term "required annual payment" means the lesser of:

- (1) Ninety percent (90%) of the tax shown on the return for the taxable year, or, if no return is filed, ninety percent (90%) of the tax for that year; or
- (2) One hundred percent (100%) of the tax shown on the return of the individual for the preceding taxable year, if the preceding taxable year was a taxable year of 12 months and the individual filed a return for that year.

(e) In the case of any required installment, if the individual establishes that the annualized income installment is less than the amount determined under subsection (d), the amount of the required installment shall be the annualized income installment, and any reduction in a required installment resulting from the application of this subsection shall be recaptured by increasing the amount of the next required installment determined under subsection (d) by the amount of the reduction and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured.

In the case of any required installment, the annualized income installment is the excess, if any, of (i) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income for months in the taxable year ending before the due date for the installment, over (ii) the aggregate amount of any prior required installments for the taxable year. The taxable income shall be placed on an annualized basis under rules prescribed by the Secretary. The applicable percentages for the required installments are as follows:

- (1) First installment – twenty-two and one-half percent (22.5%);
- (2) Second installment – forty-five percent (45%);
- (3) Third installment – sixty-seven and one-half percent (67.5%); and
- (4) Fourth installment – ninety percent (90%).

(f) No interest shall be imposed under subsection (a) if the tax shown on the return for the taxable year reduced by the tax withheld under this Article is less than the amount set in section 6654(e) of the Code or if the individual did not have any liability for tax under Part 2 of Article 4 for the preceding taxable year.

(g) For purposes of this section, the term "tax" means the tax imposed by Part 2 of Article 4 minus the credits against the tax allowed by this Chapter other than the credit allowed by this Article. The amount of the credit allowed under this Article for withheld income tax for the taxable year is considered a payment of estimated tax, and an equal part of that amount is considered to have been paid on each due date of the taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld are considered payments of estimated tax on the dates on which the amounts were actually withheld.

(h) If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, no interest shall be imposed under subsection (a) with respect to any underpayment of the fourth required installment for the taxable year.

(i) Notwithstanding subsections (c), (d), (e), and (h) of this section, an individual who is a farmer or fisherman for a taxable year is subject to the provisions of this subsection.

- (1) One installment. – The individual is required to make only one installment payment of tax for that taxable year. This installment is due on or before January 15 of the following taxable year. The amount of the installment payment must be the lesser of:
  - a. Sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the tax shown on the return for the taxable year, or, if no return is filed, sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the tax for that year; or
  - b. One hundred percent (100%) of the tax shown on the return of the individual for the preceding taxable year, if the preceding taxable year was a taxable year of 12 months and the individual filed a return for that year.
- (2) Exception. – If, on or before March 1 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, no interest is imposed under subsection (a) of this section with respect to any underpayment of the required installment for the taxable year.
- (3) Eligibility. – An individual is a farmer or fisherman for any taxable year if the individual's gross income from farming or fishing, including oyster farming, for the taxable year is at least sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the total

gross income from all sources for the taxable year, or the individual's gross income from farming or fishing, including oyster farming, shown on the return of the individual for the preceding taxable year is at least sixty-six and two-thirds percent (66 2/3%) of the total gross income from all sources shown on the return.

(j) In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months that correspond thereto. This section shall be applied to taxable years of less than 12 months in accordance with rules prescribed by the Secretary.

(k) This section shall not apply to any estate or trust. (1959, c. 1259, s. 1; 1963, c. 785, ss. 3, 4; 1973, c. 476, s. 193; c. 1287, s. 7; 1977, c. 657, s. 5; c. 1114, s. 8; 1985, c. 443, s. 2; 1989, c. 692, s. 7.1; 1991 (Reg. Sess., 1992), c. 950, s. 1; 1997-109, s. 2; 1998-98, s. 71; 1998-212, s. 29A.14(h); 2000-126, s. 4; 2005-276, s. 6.37(l); 2007-491, s. 44(1)a.)

#### **§ 105-163.16. Overpayment refunded.**

If the amount of wages or compensation withheld at the source under this Article exceeds the tax imposed by Article 4 of this Chapter against which the withheld tax is credited under G.S. 105-163.10, the excess is considered an overpayment by the employee or contractor. If the amount of estimated tax paid under G.S. 105-163.15 exceeds the taxes imposed by Article 4 of this Chapter against which the estimated tax is credited under the provisions of this Article, the excess is considered an overpayment by the taxpayer. An overpayment shall be refunded as provided in Article 9 of this Chapter. (1959, c. 1259, s. 1; 1967, c. 702, s. 2; 1973, c. 476, s. 193; c. 903, s. 3; 1975, c. 74, s. 2; 1979, c. 801, s. 71; 1981 (Reg. Sess., 1982), c. 1223, s. 1; 1983, c. 663, s. 2; c. 865, s. 1; 1985, c. 443, s. 3; 1987 (Reg. Sess., 1988), c. 1063, s. 2; 1989, c. 728, s. 1.45; 1989 (Reg. Sess., 1990), c. 814, s. 23; 1991, c. 45, s. 22; 1993, c. 315, s. 2; 1997-109, s. 2.)

#### **§§ 105-163.17 through 105-163.18: Repealed by Session Laws 1997, c. 109, s. 2.**

#### **§§ 105-163.19 through 105-163.21. Repealed by Session Laws 1967, c. 1110, s. 4.**

#### **§ 105-163.22. Reciprocity.**

The Secretary may, with the approval of the Attorney General, enter into agreements with the taxing authorities of states having income tax withholding statutes that govern the amounts to be withheld from the wages and salaries of residents of the other state or states under the provisions of this Article when the other state or states grant similar treatment to the residents of this State. The agreements may provide for recognition of the anticipated tax credits allowed under the provisions of G.S. 105-153.9 in determining the amounts to be withheld. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; 1997-109, s. 2; 2014-3, s. 14.28.)

#### **§ 105-163.23. Withholding from federal employees.**

The Secretary is designated as the proper official to make request for and enter into agreements with the Secretary of the Treasury of the United States to provide for the compliance with this Article by the head of each department or agency of the United States in withholding of State income taxes from wages of federal employees and paying the same to this State. The Secretary is authorized, empowered, and directed to request and enter into these agreements. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; 1997-109, s. 2.)

**§ 105-163.24. Construction of Article.**

This Article shall be liberally construed in pari materia with Article 4 of this Chapter to the end that taxes levied by Article 4 shall be collected with respect to wages and compensation by withholding agents' withholding of the appropriate amounts and by individuals' payments in installments of income tax with respect to income not subject to withholding. (1959, c. 1259, s. 1; 1997-109, s. 2.)